1942.

File No. O. University/4

Legal **DEPARTMENT**

"A" **BRANCH**

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Subject:—

S.E.C. 41b

Opinions under the Bombay University Act, 1928.

File No. O. University/42

Std. Sectt. Slip 24 B e.

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Office of the R.L.A.

It appears that Dr. Jivraj N.Metha, Dean of the Seth G.S. Medical College was re-elected to the Senate of the Bombay University last year from the Principals' Constituency. He will have to vacate his office on 29th August 1942, on his retirement from service as Dean of the Seth.G.S. Medical College. He proposes to to stand as a candidate for one of the five seats on the Senate from the Registered Graduate' constituency which fal' vacant on 4th August 1942 and the nominations for which have to be submitted some time towards the end of May. He desires to resign his seat on the Senate as a representative of the Principals with effect from 4th August 1942 so that he might continue to be a member of the senate without a break in the event of his election by the Registered Graduates' Constituency. The questions referred to the R.L.A. for consideration are:-

(1) Whether a sitting member of the Senate can offer himself as a condidate for election from a Constituency other than that which he represents without previously resigning his seat.

(2) Whether a member of the Seanate can resign his seat with effect from a future date so a to enable him to stand for election from another Constituency.

(3) If the Chancellor refuses to accept the resignation in view of the extraordinary course proposed to be followed by Dr. Metha, would the University Authorities be justified in holding that his nomination is invalid.

2. Sub-section(1) of section 16 of the Bombay University Act, 1928,provides that the Ordinary Fellows shall, save as herein otherwise provided,hold office for five years. Sub-section(2) enacts that an Ordinary Fellow who has vacated his office may, subject to the provisions of this Act, be elected or nominated to be an Ordinary Fellow. This provision clearly implies that no Ordinary Fello can be re-elected or nominated as such unless he has first vacated his office. The principle underlying this provision is based on the Parliamentary procedure which lays down that a member already returned for one place is ineligible for any other until his first seat is vacated. Moreover, Statute 133 of

Statute 138 of the statutes framed under section 33(2)(c) of the Bombay University Act prescribes the procedure for the nomination of a person as a candidate whenever there is a vacancy in the Senate. "Candidate" means one who seeks or aspires to some office or privilege or who offers himself for the same(see Iyer's Law Lexicion, P. 173). The membership of the senate is an office(see section15). A person who is already a member of the Senate cannot seek election to the same office unless he has in the first instance vacated the office held by him. Dr. Jivaraj MehtaMetha is a sitting member of the senate and consequently unless he vasated his office it would not be competent for him to offer himself as a candidate for election from the Registered Graduates(constituency.

3. Section 15 of the Bombay University Act provides that an Ordinary Fellow may, by letter addressed to the Chancellor, resign his office and on the acceptance of the resignation the office shall become vacant. This section does not contemplate the acceptance of the resignation with effect from a letter date which the Chancellor may fix and such an acceptance would not be competent to the Chancellor (see R.L.A.'s opinion in his U.R. to the Advocate General No.21-Concl.dated 14-1-1941 and the Advocate General's concurrent opinion dated 17-1-1941).

4. The resignation of an Ordinary Fellow takes effect not from the date of tendering the resignation but from the date of its acceptance by the Chancellor. In the opinions referred to above, the R.L.A. and the Advocate General have both expressed the view that it is open to the Chancellor not to accept the resignation of an Ordinary Fellow and if he does not accept it the office will not be vacated. Statute 14enacts that when a vacancy occurs in the Senate the Vice-Chancellor shall, as soon as possible after the last date fixed by him for the receipt of nominations,scrutinise the nominations and in case of doubt determine whether or not a candidate for election is disqualified under the Statutes. Now, in the present case five seats on the Senate from the Registered Graduates' onstituency are due to fall vacant on 4th August. According to the Registrar's letter the elections to fill these vacancies would have to be held in or about the first week of July and the date for the receipt of

receipt of nominations in respect of these elections would have to be fixed towards the end of May. It is self-evident that a person cannot hold two fellowships of the senate at one and the same time. In other words, he cannot hold the office of Fellow from two or more Constituencies at the same time. If at the date of his nomination as candidate from the Registered Graduates' Constituency, Dr.Metha continues to hold the office of Fellow from the Principals' Constituency, it would not be possible for the Vice-Chancellor at the time of scrutinising the nominations to say with any degree of certainty whether in the event of Dr. Mehta subsequently resigning his office as Fellow from the Principals' Constituency, such resignation would be accepted by the Chancellor before the date of the elections from the Graduates' Constituency. If in such circumstances the Vice-Chancellor takes the risk of accepting Dr. Mehta's nomination and Dr. Mehta is later elected as Fellow from the Graduates' Constituency before he actually vacates office as Fellow from the Principals' Constituency, the Senate would be faced with the anomaly of one member holding two Fellowships at one and the same time. To obviate the risk of such an anomaly arising the Vice-Chancellor would be justified in holding that Dr. Mehta's nomination in the extraordinary circumstances of the case is invalid. If Dr. Jivaraj Mehta desires to stand for election from the Registered Graduates' Constituency, ~~the only course open to him Registered Graduates' constituency~~, the only course open to him is to to tender his resignation and vacate his office before the date fixed for receipt of nominations.

Sd-
2-5
Remembrancer of Legal Affairs.

M.R.D.
5-5-56
C.A

U.R. to E.D.,No,3730,dated the 4th May 1942.